Reprinted
February 16, 2007

HOUSE BILL No. 1710

DIGEST OF HB 1710 (Updated February 15, 2007 5:32 pm - DI 101)

Citations Affected: IC 6-8.1; IC 26-1.

Synopsis: Dishonored check charges. Requires a special counsel or collection agency that makes a claim on behalf of the department of state revenue (department) or a county treasurer to levy on a taxpayer's property at a financial institution to: (1) submit certain information concerning the claim to the financial institution; and (2) pay a fee of $10 for each claim submitted to the financial institution. Provides that a financial institution, special counsel, or collection agency may not assess or pass along the $10 fee to: (1) the department; (2) the county treasurer; (3) the taxpayer; or (4) any other individual or governmental unit. Prohibits a bank from charging a fee for a dishonored check to any party other than the maker or drawer of the check, to the extent the prohibition applies to a federally chartered bank.

Effective: July 1, 2007.

Herrell, Ruppel, Oxley

January 26, 2007, read first time and referred to Committee on Financial Institutions.
February 1, 2007, reported — Do Pass.
February 15, 2007, read second time, amended, ordered engrossed.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *~~this style type~~* reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1710

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and commercial law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a)** After a tax warrant becomes a judgment under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an

amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer;

until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

(b) A special counsel or collection agency that makes a claim to a financial institution on behalf of the department under subsection (a)(1) or on behalf of a county treasurer under IC 6-1.1-23-10(c)(1) shall submit the following to the financial institution:

(1) Proof of employment or contract with the department under section 4 of this chapter or county treasurer under IC 6-1.1-23-1.5.

(2) Subject to subsection (c), a fee of ten dollars ($10) for each claim.

(3) A notice of levy issued by the department or county treasurer.

(4) A form approved by the department or county treasurer containing instructions for remitting funds to the special counsel or collection agency making the claim.

(5) A stamped, self-addressed envelope for return of the form submitted under subdivision (4).

(c) A financial institution, special counsel, or collection agency

may not assess or pass along a fee under subsection (b)(2) to:

(1) the department;

(2) the county treasurer;

(3) the taxpayer; or

(4) any other individual or unit of government.

SECTION 2. IC 26-1-3.1-502.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 502.5. **(a) Except as provided in subsection (b),** a person to whom a check, a draft, an order, or like instrument is tendered may, if the instrument is dishonored or returned unpaid for any reason, charge and collect from the maker or drawer, or the person for whose benefit the instrument was given, an amount not to exceed twenty dollars ($20) plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time price differential, or any charge of a similar nature.

(b) To the extent applicable to a federally chartered bank, if a check is dishonored, a bank, trust, banc, banco, or bancorp may not charge any party other than the maker or drawer of the check a fee in connection with the dishonoring of the check.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1710, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BARDON, Chair

Committee Vote: yeas 11, nays 0.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1710 be amended to read as follows:

Page 1, line 12, delete "If" and insert "**To the extent applicable to a federally chartered bank, if**".

Page 1, line 12, delete "bank" and insert "**bank, trust, banc, banco, or bancorp**".

(Reference is to HB 1710 as printed February 2, 2007.)

BARDON

HOUSE MOTION

Mr. Speaker: I move that House Bill 1710 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and commercial law.

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a)** After a tax warrant becomes a judgment under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this

subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer;

until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

(b) A special counsel or collection agency that makes a claim to a financial institution on behalf of the department under subsection (a)(1) or on behalf of a county treasurer under IC 6-1.1-23-10(c)(1) shall submit the following to the financial institution:

(1) Proof of employment or contract with the department under section 4 of this chapter or county treasurer under IC 6-1.1-23-1.5.

(2) Subject to subsection (c), a fee of ten dollars ($10) for each claim.

(3) A notice of levy issued by the department or county treasurer.

(4) A form approved by the department or county treasurer containing instructions for remitting funds to the special counsel or collection agency making the claim.

(5) A stamped, self-addressed envelope for return of the form submitted under subdivision (4).

(c) A financial institution, special counsel, or collection agency may not assess or pass along a fee under subsection (b)(2) to:

(1) the department;

(2) the county treasurer;

(3) the taxpayer; or

(4) any other individual or unit of government.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1710 as printed February 2, 2007.)

Representative Bardon